Program Proposed Budget

The following table summarizes the executive budget proposal for this program by year, type of expenditure, and source of funding.

Program Proposed Budget Budget Item	Base Budget Fiscal 2004	PL Base Adjustment Fiscal 2006	New Proposals Fiscal 2006	Total Exec. Budget Fiscal 2006	PL Base Adjustment Fiscal 2007	New Proposals Fiscal 2007	Total Exec. Budget Fiscal 2007	Total Exec. Budget Fiscal 06-07
FTE	541.42	(4.95)	(35.00)	501.47	(4.65)	(35.00)	501.77	501.77
Personal Services	22,762,646	(616,237)	(1,365,674)	20,780,735	(634,956)	(1,377,187)	20,750,503	41,531,238
Operating Expenses	8,190,987	(43,231)	852,699	9,000,455	142,356	652,699	8,986,042	17,986,497
Equipment	34,633	51,000	0	85,633	36,000	0	70,633	156,266
Benefits & Claims	92,694,789	322,762	5,370,406	98,387,957	658,703	4,870,405	98,223,897	196,611,854
Transfers	0	0	0	0	0	0	0	0
Debt Service	10,688	0	0	10,688	0	0	10,688	21,376
Total Costs	**$123,693,743**	**($285,706)**	**$4,857,431**	**$128,265,468**	**$202,103**	**$4,145,917**	**$128,041,763**	**$256,307,231**
General Fund	42,369,565	1,596,506	954,292	44,920,363	2,075,865	348,969	44,794,399	89,714,762
State/Other Special	1,150,030	139,964	499,405	1,789,399	249,538	499,405	1,898,973	3,688,372
Federal Special	80,174,148	(2,022,176)	3,403,734	81,555,706	(2,123,300)	3,297,543	81,348,391	162,904,097
Total Funds	**$123,693,743**	**($285,706)**	**$4,857,431**	**$128,265,468**	**$202,103**	**$4,145,917**	**$128,041,763**	**$256,307,231**

Program Description

Disability Services Division (DSD) assists Montanans with disabilities in living, working, and participating in their communities. The division provides or contracts for institutional care, residential services, home-based services to families, case management, and a variety of employment outcome-related services. These services include counseling and guidance, career training, transportation, adaptive equipment, orientation and mobility services to the blind, vocational rehabilitation training, independent living services, medical services, job placement, and supported employment. DSD is responsible for medical adjudication of all claims for Social Security Disability and Supplemental Security Income. The division is responsible for one state institution, the Montana Developmental Center (MDC) in Boulder.

Vocational Rehabilitation (VR) serves individuals with orthopedic, mental, visual, hearing, brain injury, and other disabilities. Developmentally disabled includes individuals with mental retardation, epilepsy, autism, or other neurological conditions that require treatment similar to those required by someone with mental retardation. In order to be considered a developmental disability, the disability must have originated before age 18 and have resulted in a substantial handicap of indefinite duration.

Statutory Title 53, MCA, 29 U.S.C. 721 et. seq., 29 U.S.C. 796, et. seq., 29 U.S.C. 774, 29 U.S.C. 777b, 29 U.S.C. 2201 et. seq., 42 U.S.C. 75, 6602, 72 U.S.C. 1300, 42 CFR 441.302(b), 42 CFR 441.302(g), 45 CFR 74.62, and 34 CRF Part 303

Program Highlights

Department of
Major Budget Highlights

- General fund support for the division increases 5 percent when the 2007 and 2005 biennia are compared. This increase is primarily due to changes in the state match for Medicaid services and a request for increased funding to move individuals from the waiting list for services
- A significant redesign of the Developmental Disabilities System is underway, including development of:
    - A tool to allocate financial resources among consumers

- A published rate schedule and changes in provider billing and reimbursement
- A settlement agreement in the lawsuit commonly know as Travis D. was reached in February, 2004. The terms of the Travis D. settlement agreement have potential impacts on:
  - The operation and population of the state institution
  - Provision of community services to individuals with specific types of needs
  - Statutory and budgetary proposals brought forward by the department
  - Administration and use of the Medicaid program
  - Policy and procedure for administration of services to developmentally disabled individuals
  - Contracting with service providers

Major LFD Issues

- Several policy issues related to the system redesign including:
  - Stop loss proposals and equalization of rates
  - Benchmarks utilized as basis for development of proposed published rate schedule
  - Screening of individuals into services
- Federal review findings and concerns that some individuals enrolled in Medicaid waiver services are not receiving all the services identified in their plan of care
- Request for funds to move individuals to community services and comply with provisions of the Travis D. settlement agreement, including startup funds to build new group homes
- Commitments to the Montana Developmental Center (MDC), including changes in the characteristics of individuals committed to the institution

Program Narrative

The Disability Services Division may be summarized into four major functions, as illustrated in the Figure 39. These four major functions and the percentage of the proposed budget that each represents are: vocational rehabilitation services, 13 percent; institutional developmental disability services, 22 percent; community developmental disability services, 61 percent; and disability determination services, 4 percent. The 2007 biennium budget requests more than $78 million per year to support community services for developmentally disabled individuals. The most common developmental disabilities exhibited by individuals receiving state funded services include mental retardation, autism, cerebral palsy, and other types of brain or neurological damage. More than 70 percent of these individuals have a secondary diagnosis such as epilepsy, cerebral palsy, deafness, blindness, mental illness, chemical dependency, and other physical difficulties.

Figure 39

Disability Services Division

Summary of Major Program Functions with Funding

Function	Fiscal 2004 Base Budget General Fund	State Special	Federal	Total Funds	Fiscal 2006 Request General Fund	State Special	Federal	Total Funds	Fiscal 2005 Request General Fund	State Special	Federal	Total Funds	Percent of Total
Vocational Rehabilitation													
Voc. Rehab. Administration	$762,993	$0	$2,820,757	$3,583,750	$804,664	$0	$2,973,097	$3,777,761	$805,853	$0	$2,977,494	$3,783,347	3.0%
Voc. Rehab. Benefits	1,609,831	0	5,851,447	7,461,278	1,677,625	0	6,101,937	7,779,562	1,748,132	0	6,362,445	8,110,577	6.2%
Visual Services Medical Benefits	84,851	0	0	84,851	84,851	0	0	84,851	84,851	0	0	84,851	0.1%
Independent Living - Admin.	22,404	0	204,739	227,143	22,404	0	169,400	191,804	22,404	0	169,198	191,602	0.1%
Independent Living - Benefits	3,726	0	70,488	74,214	3,726	0	70,488	74,214	3,726	0	70,488	74,214	0.1%
Sec. 110 Blind Low Vision Administration	132,669	0	490,348	623,017	139,870	0	516,799	656,669	139,797	0	516,526	656,323	0.5%
Sec. 110 Blind Low Vision Benefits	211,967	0	839,370	1,051,337	211,967	0	839,370	1,051,337	211,967	0	839,370	1,051,337	0.8%
In Service Training - Administration	4,653	0	41,879	46,532	4,643	0	41,788	46,431	4,644	0	41,792	46,436	0.0%
Supported Employment	0	0	186,423	186,423	0	0	186,423	186,423	0	0	186,423	186,423	0.1%
Independent Living Part B Benefits	27,124	0	219,862	246,986	27,124	228,766	219,862	475,752	27,124	228,766	219,862	475,752	0.4%
Independent Living Part B Administration	6,227	0	56,030	62,257	7,227	0	65,043	72,270	7,215	0	64,933	72,148	0.1%
Migrant Worker Benefits	0	0	332,778	332,778	0	0	332,778	332,778	0	0	332,778	332,778	0.3%
Extended Employment Benefits	512,534	0	0	512,534	512,534	270,639	0	783,173	512,534	270,639	0	783,173	0.6%
Montana Telecommunications Access Prog.	0	1,100,444	0	1,100,444	0	1,240,408	0	1,240,408	0	1,349,982	0	1,349,982	1.0%
Social Security Benefits	0	0	185,214	185,214	0	0	185,214	185,214	0	0	185,214	185,214	0.1%
Subtotal Vocational Rehabilitation	3,378,979	1,100,444	11,299,335	15,778,758	3,496,635	1,739,813	11,702,199	16,938,647	3,568,247	1,849,387	11,966,523	17,384,157	13.4%
Percent of Total	21.4%	7.0%	71.6%	100.0%	20.6%	10.3%	69.1%	100.0%	20.5%	10.6%	68.8%	100.0%	
Institutions													
Montana Development Center	$14,258,663	$49,405	$0	$14,308,068	$14,070,011	$49,405	$0	$14,119,416	$14,040,362	$49,405	$0	$14,089,767	11.0%
Eastern Montana Human Service Center	1,990,368	0	2,285,735	4,276,103	0	0	2,285,735	2,285,735	0	0	2,285,735	2,285,735	1.8%
MDC Medicaid	0	0	11,409,136	11,409,136	0	0	11,409,136	11,409,136	0	0	11,409,136	11,409,136	8.9%
Subtotal Institutions	16,249,031	49,405	13,694,871	29,993,307	14,070,011	49,405	13,694,871	27,814,287	14,040,362	49,405	13,694,871	27,784,638	21.7%
Percent of Total	54%	0%	46%	100%	51%	0%	49%	100%	51%	0%	49%	100%	
Developmental Disabilities - Community													
Administration	1,387,892	181	1,720,250	3,108,323	1,555,693	181	1,860,660	3,416,534	1,438,356	181	1,785,908	3,224,445	2.6%
Targeted Case Management Administration	553,647	0	807,173	1,360,820	638,388	0	792,010	1,430,398	647,597	0	784,802	1,432,399	1.1%
Medicaid Benefits	13,117,785	0	41,336,787	54,454,572	17,409,794	0	41,915,779	59,325,573	17,339,548	0	41,486,024	58,825,572	46.1%
Part C and General Fund Benefits	2,845,047	0	1,678,519	4,523,566	2,845,047	0	1,678,519	4,523,566	2,845,047	0	1,678,519	4,523,566	3.5%
General Fund, Title XX, Other Benefits	4,497,090	0	4,406,312	8,903,402	4,493,690	0	4,401,212	8,894,902	4,493,690	0	4,401,212	8,894,902	6.9%
Targeted Case Management Benefits	340,094	0	1,071,671	1,411,765	411,105	0	1,000,660	1,411,765	421,552	0	990,213	1,411,765	1.1%
Subtotal Developmental Disabilities-Comm.	22,741,555	181	51,020,712	73,762,448	27,353,717	181	51,648,840	79,002,738	27,185,790	181	51,126,678	78,312,649	61.4%
Percent of Total	31%	0%	69%	100%	35%	0%	65%	100%	35%	0%	65%	100%	
Other													
Disability Determination Services	0	0	4,159,230	4,159,230	0	0	4,509,796	4,509,796	0	0	4,560,319	4,560,319	3.5%
Subtotal Other	0	0	4,159,230	4,159,230	0	0	4,509,796	4,509,796	0	0	4,560,319	4,560,319	3.5%
Percent of Total	0.0%	0.0%	100.0%	100.0%	0.0%	0.0%	100.0%	100.0%	0.0%	0.0%	100.0%	100.0%	
Total Disability Services Division	$42,369,565	$1,150,030	$80,174,148	$123,693,743	$44,920,363	$1,789,399	$81,555,706	$128,265,468	$44,794,399	$1,898,973	$81,348,391	$128,041,763	100.0%
Percent of Total	34.3%	0.9%	64.8%	100.0%	35.0%	1.4%	63.6%	100.0%	35.0%	1.5%	63.5%	100.0%	

As illustrated in the Figure 40, only two categories of benefits comprise more than 10 percent of the benefits provided by the division. Medicaid benefits provided to developmentally disabled individuals living in the community comprise 60 percent of the benefits provided by the division. Medicaid reimbursement for services provided to developmentally disabled individuals residing in the state institution comprise almost 12 percent of the benefits provided by the division.

Figure 40
Disability Services Division
Summary of Benefits Costs with Funding

	Fiscal 2004 - Base Budget				Fiscal 2006 Request				Fiscal 2007 Request				
Description	General Fund	SSR	Federal Funds	Total Funds	General Fund	State Spec. Rev	Federal Funds	Total Funds	General Fund	SSR	Federal Funds	Total Funds	Percent Total
Benefits and Claims													
Voc. Rehab. Benefits	1,605,696	-	5,868,504	7,474,200	1,673,675	-	6,118,809	7,792,484	1,744,361	-	6,379,138	8,123,499	8.3%
Visual Services Medical Benefits	84,825	-	-	84,825	84,825	-	-	84,825	84,825	-	-	84,825	0.1%
Independent Living - Admin.	7	-	60	67	8	-	59	67	8	-	59	67	0.0%
Independent Living - Benefits	3,710	-	70,180	73,890	3,710	-	70,180	73,890	3,710	-	70,180	73,890	0.1%
Sec. 110 Blind Low Vision Benefits	211,969	-	839,378	1,051,347	211,969	-	839,378	1,051,347	211,969	-	839,378	1,051,347	1.1%
Supported Employment	-	-	186,423	186,423	-	-	186,423	186,423	-	-	186,423	186,423	0.2%
Independent Living Part B Benefits	27,121	-	219,836	246,957	27,121	228,766	219,836	475,723	27,121	228,766	219,836	475,723	0.5%
Independent Living Part B Admin	150	-	1,350	1,500	150	-	1,350	1,500	150	-	1,350	1,500	0.0%
Migrant Worker Benefits	-	-	332,778	332,778	-	-	332,778	332,778	-	-	332,778	332,778	0.3%
Extended Employment Benefits	512,534	-	-	512,534	512,534	270,639	-	783,173	512,534	270,639	-	783,173	0.8%
Social Security Benefits	-	-	185,214	185,214	-	-	185,214	185,214	-	-	185,214	185,214	0.2%
Eastern Montana Human Service Center	-	-	2,285,735	2,285,735	-	-	2,285,735	2,285,735	-	-	2,285,735	2,285,735	2.3%
MDC Medicaid	-	-	11,409,136	11,409,136	-	-	11,409,136	11,409,136	-	-	11,409,136	11,409,136	11.6%
Medicaid Benefits	13,117,785	-	41,336,787	54,454,572	17,409,794	-	41,915,779	59,325,573	17,339,548	-	41,486,024	58,825,572	59.9%
Part C and General Fund Benefits	2,845,047	-	1,678,519	4,523,566	2,845,047	-	1,678,519	4,523,566	2,845,047	-	1,678,519	4,523,566	4.6%
General Fund, Title XX, Other Benefits	4,253,011	-	4,167,160	8,420,171	4,253,011	-	4,167,160	8,420,171	4,253,011	-	4,167,160	8,420,171	8.6%
Targeted Case Management Benefits	340,094	-	1,071,671	1,411,765	411,105	-	1,000,660	1,411,765	421,552	-	990,213	1,411,765	1.4%
Disability Determination Services	0.00	0.00	40,109.00	40,109.00	0.00	0.00	44,587.00	44,587.00	0.00	0.00	49,513.00	49,513.00	0.1%
Total Benefits and Grants	$23,001,949	$0	$69,692,840	$92,694,789	$27,432,948	$499,405	$70,455,604	$98,387,957	$27,443,835	$499,405	$70,280,657	$98,223,897	100.0%

Because services for developmentally disabled individuals consume the majority of the funding for this division, the program narrative will focus primarily on the functions of the division related to these services.

System Redesign

The developmental disability (DD) service system is in the process of significant system change and evolution. Among the primary system changes that will be implemented are:

- Resource allocation changes - The process for allocation of the available funding among service recipients will change
- Statewide published provider rates - The fees that providers will be reimbursed will be determined based upon a published fee schedule and will be uniform statewide
- Provider billing - Rather than billing each month for 1/12 of a contracted amount, providers will bill for the services provided to each individual

The changes currently being planned in the DD system impact most DD system stakeholders including consumers, consumer families, providers, and the department. Additionally, as planning is undertaken for these changes, review, discussion, and change of policies occur. While some policy changes are insignificant, there are a number of significant policy issues under discussion within the department. The legislature may wish to "weigh in" on these discussions. While few of the decision packages included in the executive budget speak directly to any one policy issue, most policy decisions are an integral part of determining how resources will be utilized. However, spending decisions and priorities may support or hinder the implementation of specific public policies.

The following narrative will discuss the catalyst for change, the planning process, the two major products under development for the division by a contractor, potential implications of these changes, implementation of changes, and policy issues related to the DD system.

Catalyst for Change

The two major catalysts for change influencing the DD system are 1) federal Medicaid requirements and findings from the Center for Medicare and Medicaid (CMS) review of the Home and Community Based Services (HCBS) waiver serving developmentally disabled individuals; and 2) litigation. Both are significant because they may impact the financial status of the state. CMS may do so by withholding federal Medicaid reimbursement if the state is not in compliance with federal requirements[4]. Court cases may do so by specifying both the level of state funding and how the funding must be expended.

Center for Medicare and Medicaid Review

In 2000[5], CMS reviewed Montana's HCBS waivers that serve developmentally disabled individuals. This review resulted in a number of findings and as a consequence Montana negotiated and entered a plan of corrective action. DPHHS continues to implement portions of that corrective action plan. At this time the department's primary focus, and a portion of the corrective action plan yet to be completed, deals with provider reimbursements and consumer freedom of choice, also sometimes referred to as portability of client services.

One significant CMS finding was related to Montana's system of contracting with a limited number of providers, reimbursement of those providers per contract, the "slot" system of placement, and the impact these items have on consumer freedom of choice. Montana's DD system was built based upon:

- Providers responding to a request for proposal
- The department selecting and entering into contracts with some respondents
- The negotiation with each provider of contract terms and dollars
- Consumers being limited in choice to those providers with a contract, and even further restricted to those providers with an opening or "slot" available

This system, as it was when reviewed by CMS, does not:

- Allow any/all qualified providers to participate in the DD service delivery system
- Include a consistent statewide reimbursement method where the same service is reimbursed at the same rate for all providers statewide or, as an alternative, specify a rationale basis for differing rates among providers
- Does not allow consumers to purchase services from the qualified provider of their choice
- Does not facilitate portability (the ability of the consumer to move fluidly from provider to provider) of consumer benefits

Under Medicaid regulations a consumer must be free to choose from among a list of qualified providers[6]. While the state may, within guidelines, establish criteria for a provider to be considered qualified, any provider who meets those criteria may participate in the service delivery system and consumers may choose among qualified providers. To remedy the deficiencies, CMS indicated DPHHS should implement a system that complies with general Medicaid requirements and facilitates consumer freedom of choice among providers and portability of benefits. In the time elapsed between the CMS review and today, the department has implemented changes such as:

- Development and implementation of criteria and a process to determine providers that are qualified to participate in the DD service delivery system
- Freedom of choice (portability) among providers within a service category. For example, a consumer utilizing group home services may choose from among the qualified providers of group home services

Process of Change

Given the magnitude of the changes mandated by CMS and the significant level of effort that would be necessary to complete these changes, the department decided to hire a contractor to assist with several issues and in particular to assist with the development of a uniform statewide reimbursement methodology. In October 2003, Mercer Government Human

[4] In FY 2004, DD community services expended more than $40 million federal Medicaid funds and over $10 million federal Medicaid funds were deposited in the state general fund as reimbursement for care provided at the state institution for developmentally disabled individuals.

[5] The final CMS report of the results of this review are dated April 30, 2001. However, the actual review was conducted in 2000.

[6] Under certain circumstances a state may request a waiver from Medicaid freedom of choice requirements. Montana does not have such a waiver approved for developmental disability services.

Services Consulting (Mercer) began working to assist the department in issues related to the DD system. There are primarily two products being developed by Mercer under contract with the department. These two products are:

- The Montana Resource Allocation Protocol (MONA)
- A schedule of published rates and reimbursement methodology that will be utilized statewide

Montana Resource Allocation Protocol

The MONA is a tool that will be used to allocate the funding for DD HCBS waiver services among service recipients. The client and other individuals invited by the client work with a case manager to respond to a number of questions. The software application then applies formulas to determine the level of financial support needed to provide services to the individual. There are two versions of this tool, one to be used for children age six and above and another to be used for adults.

As of this writing the department has completed a MONA for most recipients in the adult waiver services and plans to complete a MONA for recipients in the children's waiver services by the end of calendar 2004. The initial results of the MONA are being evaluated, additional staff training is being completed, and adjustments are being made if necessary. The resource allocation determined by the MONA will be reviewed and compared to the actual level of service provided to the individual during a pilot implementation that is scheduled to begin in January, 2005.

Provider Rates and Billing

Over the course of the past year the department via Mercer has been developing provider rates and a reimbursement methodology. The department plans to move to a published rate schedule that will be used to reimburse all providers and to a reimbursement methodology that reimburses based upon the service provided to the individual, rather than a contract with a provider to serve a predetermined number of individuals. This type of reimbursement system will more easily facilitate consumer choice among providers and portability of services from location to location.

The proposed rate structure for DD services includes some reimbursements that will be made based upon utilization (an amount per unit of service provided) and some reimbursements that will be based upon a capitated system (a set amount per month of service, regardless of how many or few units of service are provided). The methodology used to arrive at both types of rates is similar. Figure 41 summarizes proposed non capitated rates for selected services within the DD system. The proposed rates for the DD system[7] are comprised of four factors:

- Direct care wage rate
- Employee benefits
- Program related costs
- General and administrative costs

Figure 41
Summary of Selected Proposed DD System Rates
Draft for January 2005 Pilot

Component	Vocational Svcs Facility Based	Day Activity Program	Group Homes 1- 6 sites	Supported Living	Health Add - On	Behavior Add - On
Direct Care Wage	$9.10	$9.10	$8.29	$9.10	$6.71	$6.71
Employee Benefits Percent	30.45%	30.45%	30.45%	30.45%	30.45%	30.45%
Subtotal	$11.87	$11.87	$10.81	$11.87	$8.75	$8.75
Program Related Costs	27.7%	27.7%	21.5%	21.5%	7.0%	7.0%
Subtotal	$16.42	$16.42	$13.77	$15.12	$9.41	$9.41
General and Admin.	7.0%	7.0%	7.0%	12.0%	0.0%	0.0%
Base Hourly Rate	$17.66	$17.66	$14.82	$17.18	$9.41	$9.41

Selected Proposed Capitated Rates Service	Hourly Rate	Mean Hrs/Day	Days Per Month	Hours/ Month	Per Member Per Month Rate
Supported Employment/ Competitive Employment	$18.52	2.5	22	55	$1,018.60
Family Education & Support Non Waiver Service	$12.06	1	22	22	$265.32
Family Education & Support Medicaid Waiver	$14.81	3	22	66	$977.46

[7] The department considers these rates to draft rates that may be subject to change. However, the department has also indicated that these are the rates that are intended to be utilized during the pilot implementation of system changes beginning in January 2005.

Some portions of the rate calculation methodology use comparable benchmarks. Utilization of a benchmark is valuable in determining reimbursement rates. However, the use of a benchmark does not mean providers are required to pay costs at that rate. It simply means the reimbursement rate is adequate to pay costs at the specified level. Providers maintain freedom to establish employee wages, benefits, and other costs at the level the provider wishes.

In arriving at the direct care wage rate that would be assumed as part of the reimbursement rate calculation, the contractor evaluated a number of data sources of wage and salary information for comparable job duties to arrive at a benchmark.

The benchmark wage rate is set at the 25th percentile for comparable jobs. Perhaps the most understandable explanation of what it means for the benchmark to be set at the 25th percentile is that if four individuals applied for the position, one of the four individuals would accept the position at the wage rate offered[8]. Employee benefits, including both mandated (social security, Medicare tax, workers compensation, and unemployment) and non mandated (health insurance, retirement, paid time off, etc), were benchmarked at 30.45 percent of wages[9]. Program related costs were benchmarked at varying rates depending upon the service and range from 7 to almost 28 percent. General and administrative costs were benchmarked at varying rates ranging from 6 to 12 percent depending upon the service. In addition to the base hourly rate displayed in Figure 41 the proposed rate structure will incorporate a geographical factor that will increase reimbursement rates for some services provided in the eleven counties that ranked highest in several factors related to costs of housing, labor, etc.

As illustrated in the lower half of Figure 41 the department has proposed that payment for services such as Supported Employment and Family Education and Support be made on a capitated basis. In the case of a capitated reimbursement the provider is paid a monthly fee for providing service to an individual regardless of how much or little service the person utilizes. Under a capitated rate model the provider bears some risk and responsibility for management of utilization since reimbursement does not increase if utilization increases, likewise reimbursement does not decrease if utilization decreases.

LFD ISSUE

Stop Loss Considerations

Department staff indicated from the inception of the Mercer project that they anticipated the move to a published rate schedule, uniform reimbursement statewide, and uniform resource allocation protocols would create winners and losers due to increases and decreases in reimbursement and resource allocation that will occur.

While realizing that there will be winners and losers, the department also seeks to maintain a viable provider network statewide and minimize impacts on consumers. Thus, the department has been considering stop loss options. That is, the department is considering limiting the amount of revenue increase or decrease any one provider would experience, and the amount of resource allocation increase or decrease a consumer would receive. At the most recent advisory group meeting department staff indicated that for the purposes of the pilot implementation project the gain or increase would be limited to no more than seven percent and the decrease or loss to no more than ten percent.

The legislature may wish to consider whether or not:

- System changes should be implemented in this incremental manner, or
- System changes should be fully implemented at one time

Timing of full implementation of these changes is discussed below.

[8] As explained by Roger DeShaies, Davis-Deshaies LLC to Mercer project advisory committee.

[9] For selected DPHHS positions comparable in per hour wages, employee benefits (excluding longevity and insurance) were about 27 percent of the hourly wages. When health insurance costs were included in the calculation, employee benefits become more than 60 percent of the wage costs. It is important to note that as hourly wage rates increase employee benefits become a smaller percentage of the wage rate because some benefit costs (such as health insurance coverage) do not fluctuate with employee wage rates.

Implementation

The department plans to begin a pilot project implementing changes in resource allocation and reimbursement related to Medicaid waiver services for adults in January 2005. This pilot will last six months and involve about 160 individuals and the providers serving those individuals. The participants in the pilot were selected based upon a statewide random sample, with individuals having the option not to participate in the pilot if they wish to exercise that option. The department will be closely monitoring the impact of system changes on both consumers and providers. Additionally, the department is in the planning stages of pilot implementation of changes in the children's system, and currently plans to implement a pilot in the children's system around March 1, 2005.

LFD ISSUE

While the department is proceeding with pilot implementation of the published rate structure and changes in allocation of resources, it has not established a timeline or date for full implementation of these changes. The anticipated timeframe for full implementation is vague and may exceed more than one year. A statewide implementation that occurs over more than one year increases the potential for the new system to become out of date prior to implementation, thus causing additional implementation difficulties and potential delays. Given that historically this service delivery system has been slow to change, the department has been working on these changes since the CMS review was completed in the year 2000, and the Mercer project has been in progress since the fall of 2003, the legislature may wish to:

- Provide the department direction regarding the timeframe to be used to fully implement use of the published rate structure and resource allocation protocol
- Include language in HB 2 that conditions the appropriation of funds to support developmental disability services provided in community settings in the second year of the biennium upon the department fully implementing the published rate structure and resource allocation protocol by a specified date. If the legislature chooses to include this condition in HB 2, failure to fully implement the published rate structure and resource allocation protocol by the specified date would result in the department loss of the funding appropriated to support developmental disabilities community services

Stakeholder Involvement

Throughout the course of the past year as the DD program has pursued the Mercer project, the department has involved consumers, providers and other stakeholders via various mechanisms. An advisory group consisting of consumer representatives, providers, legislators, and other interested parties have met monthly to provide feedback and advice to the department. So called "focus" group meetings have been held statewide with consumers, consumer organizations, providers, and the public to provide information and respond to changes. Additionally, several meetings have been held with providers and provider groups to review the methodology behind the proposed rate, data collection and findings, and billing related issues. Recognizing that the changes underway in the DD system have the potential to significantly impact providers and impact the way business is conducted within the system, the department has included in the contract with Mercer funding to provide technical assistance to providers wishing to participate. The technical assistance proposed may include topics such as development of business plans, analysis of market share, profitability of services provided, and other such topics. A number of national consultants with expertise in a range of business related issues will be made available to assist groups of providers or individual providers as requested.

Litigation

Issues surrounding the provision of services to developmentally disabled individuals have been the subject of litigation at both the state and federal level. At the federal level, the U.S. Supreme Court decision in the case commonly known as Olmstead has been well publicized for its impact on states and the delivery of services to disabled individuals. At the state level, the recent settlement of the case commonly known as Travis D. has immediate program and financial impacts, some of which are included in the budget proposed by the executive.

On February 5, 2004 the court ordered settlement of the Travis D. lawsuit was signed. Travis D. was a class action lawsuit filed by the Montana Advocacy Program (MAP) in 1996. Defendants in this suit included the state of Montana, MDC, Eastern Montana Human Services Center (Eastmont), and key personnel. This lawsuit sought to protect the civil rights of individuals with disabilities and the provision of appropriate community services for individuals with disabilities. The terms of the settlement agreement between the executive branch and the plaintiffs include requirements for the department to:

- Develop and present to the legislature:
  - In 2005, a statutory change in commitment laws removing from the definition of "seriously developmentally disabled" in 53-20-102, MCA, a person with self-help deficits requiring near total care (LC 0134)
  - In 2005, a budgetary proposal to provide funding for the placement in community services of all persons continuing to reside at MDC whose commitment is due to self-help deficits so severe as to require near total care and who have been referred for community services by their professional treatment team (portions of DP 39)
  - In 2007, a proposal seeking funding and any necessary statutory changes to implement models of developmental disability community services for persons with sexually offending behaviors
- Close unit 16AB on the MDC campus and move 45 residents to community settings by December 31, 2007
- Offer and, if accepted, provide services to all members of the plaintiff class currently without services[10]
- Take reasonable actions to maximize federal funding for developmental disabilities community services through payments of services with federal program funds (Medicaid, Title XX Social Services Block Grant, etc) and through efforts to assist persons not currently eligible for Medicaid to become Medicaid eligible
- Train various department and provider staff, and develop policies and/or programs related to various topics including: behavior management, dually diagnosed individuals, and developmental disability community services for individuals with sexually-offending behaviors
- Not fund development of any seven or more person capacity community homes (except multiplex apartments) or contract with any provider to serve more than eight residents in an existing community home for persons with developmental disabilities

The settlement agreement in the Travis D. litigation impacts the DD system in multiple areas including:

- Operation and population of the state institution
- Provision of community services to individuals with specific types of needs
- Requiring statutory and budgetary proposals be brought forward for legislative consideration
- Administration and use of the Medicaid program
- Policy and procedures for administration of the DD system
- Contracting with service providers

In correspondence dated April 19, 2004, legislative legal counsel responded to a number of questions about the Travis D. settlement agreement that were posed by a member of the legislature[11]. This correspondence, which may be obtained upon request from the legislative library, contains information on two types of topics, those specific to the DD system and those that also have potential cross system impacts. Some of the major questions specific to the DD system discussed in this correspondence include:

- Are the terms of the settlement agreement binding upon the legislature? In part, this correspondence indicates that while the settlement agreement is worded in terms of binding the "state" the legislature is not a party to the agreement. Thus, the legislature is not bound by the terms of the agreement. However, in the event that legislative action prevents the department from fulfilling the contractual obligations outlined in the terms of the settlement agreement, further litigation might be pursued.
- May the legislature enact changes that limit eligibility, service array, service availability, and funding for the DD system? This correspondence states in part that "a settlement agreement or consent decree does not freeze the underlying statute's provisions in place" and that the Montana Constitution specifically authorizes the legislature to determine whether or not to provide social and rehabilitative services and to set rational eligibility criteria for programs and services, as well as for the duration and level of benefits and services.

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[10] DPHHS staff indicated there are about 225-250 individuals in the plaintiff class and that most of those clients who wish to received services are receiving services. The initial department estimate of the costs to serve individuals in the plaintiff class who are not already receiving services is about $40,000. Per personal conversation with Jeff Sturm, DDP manager and Gail Briese-Zimmer, DSD Fiscal Bureau Chief on February 27, 2004.

[11] April 19, 2004 correspondence from Gregory J. Petesch, Director of Legal Services to Representative Edith Clark.

- May limits be placed on the services requested by class members, such as denying services that are determined to be excessively costly under predetermined criteria? The settlement agreement appears to vest access to services for an individual within the limits of the cost plan. However, there are no provisions governing the establishment of the cost plan in statute or administrative rules. Additionally, there are a number of provisions in the settlement agreement that restrict or specify actions the department may take. The ability to limit services and deny excessively costly services appears to be possible within the constraints outlined by various provisions of the settlement agreement.
- Do provisions of the settlement agreement apply only to those individuals certified as included in the class of plaintiffs in the Travis D. litigation and if not, then to what group or groups does the settlement agreement apply? Legislative legal counsel indicates that the settlement agreement applies to any person who has been, is, or will be a resident of either of the two institutions for developmentally disabled individuals between August 23, 1996 and the date that the court preliminarily approves the settlement agreement. Furthermore, provision of services to the individuals covered by the agreement has implications for similarly situated individuals who are not covered by the settlement.

Thus, it appears that the legislature may, if it wishes:

- Limit services or deny excessively costly services within the constraints contained in various provisions of the settlement agreement
- Limit eligibility, service array, service availability and funding for the DD system

System and budgetary changes needed to comply with the provisions of the Travis D. settlement agreement are interwoven with those necessary to comply with federal Medicaid and other requirements.

System Policy Issues

As department staff has moved forward with planning and implementation of the many changes occurring within this system, they have found that the lines between actions taken to meet various requirements are generally gray. That is, many of the actions taken and underway within the system fulfill or partially fulfill multiple needs. Because it is difficult to isolate actions taken as part of complying with CMS requirements from those taken to comply with the settlement agreement, these actions and related policy issues are discussed in relation to the system as a whole. The following portion of the narrative outlines several significant policy issues related to this system that the legislature may wish to discuss.

LFD ISSUE

The Mercer project advisory committee has considered several policy issues related to the changes in the DD system. The legislature may wish to “weigh in” on a policy issues related to the DD system, including those discussed in the following narrative.

The legislature may wish to have the department and Mercer review the assumptions used to develop the MONA and proposed provider reimbursement rates. The legislature may wish to consider whether or not it concurs with the department policy decisions related to:

- How and where the various components of the rates were benchmarked? Direct care worker wages? Employee benefits? Program related costs? General and administrative costs?
- Provision of a geographic adjustment for 11 counties within the state?

The department is in the process of revising the criteria that will be used to screen individuals seeking services and prioritize allocation of services among consumers. While there are some differences in the screening criteria for children verses adults, the concepts discussed below apply to both. The most recent proposed screening criteria calls for the following “filters” to be among the criteria used to include/exclude individuals from acceptance into the service system:

- Only individuals whose resource allocation (MONA) is equal to or no more than 10 percent less than the resource allocation of the person exiting services would be considered for the opening

LFD ISSUE CONT.

- Persons residing in and desiring to receive services in the community where the opening occurred will be given preference for the service opening
- The opening will be offered to the person in highest need whose need can be met in the opening

The legislature may wish to consider the following:

- Should entry into the system be limited by the amount of resources allocated/needed by the individual? Or, should the person in greatest need be accepted into services even if it means waiting for a second opening to occur so that the resources from two openings may be combined to serve one individual with greater financial resources need (a larger cost plan)?
- The policy as distributed to the advisory committee does not define "highest need" nor specify what criteria are used to determine "highest need"
- Does the preference given to persons residing in and desiring to receive services in the community where the opening occurred resemble too closely the "slot" system that CMS has indicated does not comply with federal Medicaid requirements?
- Does the screening policy as outlined by the department facilitate consumer choice and portability of benefits as required under federal Medicaid regulation?
- Should the recipient's financial condition be considered when determining priority for entry into publicly funded services, with those individuals of lower income and without financial resources such as trust funds receiving priority for publicly funded services?
- Should the income and financial condition of a child's parents be considered when determining priority for entry into publicly funded services, with those individuals of lower income and without financial resources receiving priority for publicly funded services?

LFD ISSUE

During the course of the CMS review, CMS staff indicated that a number of individuals enrolled in HCBS waiver services had needs identified in their plan of care that were not being met. In some cases these needs are not being met because the resources allocated to the individual may not be adequate to provide for all the needs identified in the individual plan of care. This issue arises because individuals may be enrolled into the HCBS waiver although the resources available to fund their plan of care are not adequate to fully fund their needs.

This CMS finding points to an apparent policy difference between CMS expectations and how the state has implemented HCBS waiver services. It seems that the state has generally provided services utilizing a philosophy of providing some services to a larger number of individuals, while CMS review findings seem to illustrate a philosophical preference for provision of all services identified in the individual plan, even if that results in few individuals being served. This philosophical difference could potentially result in a compliance issue that is very costly to remedy, since it is likely a significant amount of additional funding would be necessary to achieve compliance for all individuals currently enrolled in HCBS waiver services but not receiving all the services identified in their individual plan of care. The legislature may wish to:

- Direct the department to develop and provide to the legislature a plan for achieving compliance with this CMS finding
- Consider this philosophical policy difference when determining the manner in which any additional funding appropriated for this service system this system is to be used. Given that this action may increase both the risk of financial penalties related to noncompliance with federal Medicaid regulations and the costs of achieving future compliance with CMS findings in this area, does the legislature wish to allow consumers to enter into publicly funded services if their complete plan of care cannot be funded?

LFD ISSUE

During the course of working through changes in the system, working with the contractor, and through internal reviews completed by the Medicaid policy oversight unit, the department has identified areas where the state is not complying with federal Medicaid requirements. Two examples of this are discussed below.

Previously, when children "aged out" of children's services, they were moved to the waiting list of adult services, although the child was enrolled in the Medicaid waiver. Under the Medicaid waiver Montana operates, an individual is considered enrolled in the waiver until the individual chooses to exit. Because children and adults are served under the same waiver in Montana, the exiting of children from the waiver when they "aged out" and placement of these individuals on the waiting list was contradictory to Medicaid requirements. In the fall of 2004 the department implemented a policy change related to transition of individuals enrolled in the HCBS waiver from children's services to adult services. Effective in the fall of 2004 children enrolled in the HCBS waiver no longer move to the waiting list for adult services. Rather, these children continue to be enrolled in waiver services and move to adult services immediately upon "aging out" of children's services. Individuals in this situation enter adult services with the same resource allocation as they had while in children's services.

This change in policy may enlarge the pool of consumers enrolled in the waiver that are not receiving all the services identified in their plan of care and further expand the potential financial risk related to the issue discussed previously in this narrative. The legislature may wish to:

- Request that the department develop and present a plan for fully funding the costs plans of consumers moving from children to adult services within the funding currently available

Secondly, during the November 30, 2004 meeting with the DD project advisory group, department staff indicated that the method being used for billing Medicaid targeted case management services is not consistent with Montana's Medicaid state plan and thus out of compliance with Medicaid requirements. Rather than billing an established rate per contact, and based upon the number of client contacts as outlined in the state Medicaid plan, targeted case management billing has been done on a contract basis. Department staff indicated that because the contracts for case management services are generally fully billed to the state a couple months before year end, changes in billing for targeted case management services will likely not be implemented until July 1, the beginning of a new fiscal year.

Institutional Population

While the executive budget proposes movement of a number of individuals to community settings, the department does not anticipate a significant decrease in the number of residents at the institution. The department has been working on a one-in, one-out policy. That is, whenever a new commitment is made to the institution, the department attempts to shift resources and discharge a resident so that the total population at the institution does not increase. The department has also been experiencing a shift in the characteristics of the individuals committed to the institution. In general, the population currently being committed is increasingly difficult to serve due to behavioral issues including an increase in the number of individuals criminally committed, the severity of medical issues, and with the goal of placement in community services complicated in some cases due to difficulties experienced in previous attempts to provide community services.

LFD ISSUE

The change in characteristics of the population being served at MDC raises a number of questions and issues such as:

- What are the current and future roles of MDC in serving individuals criminally committed to that facility rather than a correctional facility?
- What numbers of clients and mix of services are appropriate for the facility?
- What alternative care settings are needed and appropriate?

LFD ISSUE CONT.

- Is community integration appropriate and achievable for some individuals within the public resources available? If not, is the state positioned to defend itself from further litigation in this area? Is the state likely to be determined by a court to be in compliance with the terms of the federal court finding in the Olmstead case?

The increase in the number of individuals criminally committed to the facility highlights issues such as:

- Can the various populations be appropriately segregated in a manner that ensures the health and safety of residents and staff?
- Are changes to the physical structure of the facility necessary or desirable to accommodate those criminally committed?
- Will changes in Medicaid reimbursement occur, since individuals criminally committed to an institution are generally not eligible for Medicaid payment for services?
- Are changes in treatment protocols and other processes necessary to accommodate those criminally committed?

The legislature may wish to:

- Direct the department to project future numbers and characteristics of the population committed to MDC and developed a strategic plan, including necessary physical plant changes that may be needed to accommodate the changing characteristics of the population at the institution, and present this report to the appropriate interim legislative committee
- Study whether or not a state institution based upon a correctional model of service should be developed to provide services to developmentally disabled individuals that are committed to a state institution under criminal proceedings, and present the study findings to the appropriate interim legislative committee

Pending Litigation

In September 2002, the Montana Association for Independent Disability Services, Inc. (MAIDS) and several individuals with developmental disabilities filed suit. Defendants in the MAIDS lawsuit include the Department of Public Health and Human Services and key department and state personnel. MAIDS is a non-profit organization comprised of entities providing community-based services to individuals with developmental disabilities. This suit alleges that the disparity in wages and benefits paid to employees of community based providers, verses the wages and benefits paid to employees of state institutions, has resulted in irreparable and unnecessary harm to the plaintiffs. The plaintiffs allege that several statutory and constitutional provisions have been violated and seek: 1) to have the wage and benefit disparity between employees of state run institutions and community providers eliminated; and 2) to have uniform Medicaid reimbursement rates established. The court is schedule to hear this lawsuit in August of 2005.

A finding in favor of the plaintiffs and requiring the state to reimburse contractors at a level that provides direct care wage rates that are comparable to state employees would likely have a financial impact on the DD system that would be measured in terms of millions of dollars. The potential for similarly situated employee groups of contractors to file similar legal actions exist. The probability and magnitude of such action is currently unknown. Furthermore, how such a finding might impact the definition of employee, employer relationships, and other aspects of labor relations and compensation has not been studied.

Funding

The following table shows program funding, by source, for the base year and for the 2007 biennium as recommended by the executive.

DSD is funded with a combination of general fund (35 percent), state special revenue (1 percent) and federal funds (64 percent). Most general fund support is used to draw down federal matching funds. The matching ratio for federal programs administered by the division varies. However, the most common ratios are:

- Medicaid services are funded at the federal medical assistance participation rate, which is generally about 30 percent state funds and 70 percent federal funds
- Medicaid administrative costs are funded on a 50/50 ratio of state and federal funds

- Vocational Rehabilitation services are funded on a 21/79 ratio of state and federal funds
- Disability Determination services are funded entirely with federal funds
- The Montana Developmental Center (MDC) is funded entirely with general fund. Medicaid reimbursements for services provided at MDC are first used to repay bond debt and the remaining balance is deposited in the general fund.

Program Funding Table
Disability Services Division

Program Funding	Base FY 2004	% of Base FY 2004	Budget FY 2006	% of Budget FY 2006	Budget FY 2007	% of Budget FY 2007
01100 General Fund	$ 42,369,565	34.3%	$ 44,920,363	35.0%	$ 44,794,399	35.0%
02035 Mdc Vocational	49,405	0.0%	49,405	0.0%	49,405	0.0%
02159 Handicapped Telecommunications	1,100,444	0.9%	1,240,408	1.0%	1,349,982	1.1%
02475 Ddp Training Fund	181	0.0%	181	0.0%	181	0.0%
02698 69010-Prevention&Stabilization	-	-	499,405	0.4%	499,405	0.4%
03024 Soc Sec - Trust Funds	185,214	0.1%	185,214	0.1%	185,214	0.1%
03554 84.169 - Independent Living 90	275,892	0.2%	284,905	0.2%	284,795	0.2%
03555 84.177 - Indep Living Old Blin	275,227	0.2%	239,888	0.2%	239,686	0.2%
03556 84.181 - Part H - Early Interv	1,797,210	1.5%	1,797,210	1.4%	1,797,210	1.4%
03557 84.187 - Vic Sup Employment	186,423	0.2%	186,423	0.1%	186,423	0.1%
03558 84.224 - Mon Tech 100%	332,778	0.3%	332,778	0.3%	332,778	0.3%
03559 84.265 - In Service Training 9	41,879	0.0%	41,788	0.0%	41,792	0.0%
03579 93.667 - Ssbg - Benefits	4,095,771	3.3%	4,095,771	3.2%	4,095,771	3.2%
03580 6901-93.778 - Med Adm 50%	397,742	0.3%	397,742	0.3%	397,742	0.3%
03583 93.778 - Med Ben Fmap	56,103,329	45.4%	55,091,794	43.0%	54,668,820	42.7%
03588 93.802 - Disabil Deter Adm 100	4,159,230	3.4%	4,509,796	3.5%	4,560,319	3.6%
03599 03 Indirect Activity Prog 10	2,321,600	1.9%	3,961,263	3.1%	3,862,075	3.0%
03604 84.126 - Rehab-Sec110 A 78.7%	10,001,853	8.1%	10,431,134	8.1%	10,695,766	8.4%
Grand Total	$ 123,693,743	100.0%	$ 128,265,468	100.0%	$ 128,041,763	100.0%

The single largest source of funding for the division is Medicaid benefit reimbursements that provide 43 percent of the division funding. Other than the general fund, no other funding source provides more than 10 percent of the funding for the division.

Bed Day Utilization Fee

HB 722 from the 2003 session imposed a utilization fee on resident bed days of intermediate care facilities for the mentally retarded (ICF/MR). The fee imposed was equal to 5 percent of the facility's quarterly revenue, divided by the resident bed days for the quarter. This fee becomes part of the operating costs of the facility and is Medicaid reimbursable. The proceeds (Medicaid reimbursement) of the utilization fee are deposited 30 percent in the general fund and 70 percent in the state special revenue fund (prevention and stabilization fund) for use by the department. Funding to pay the utilization in the current biennium was appropriated in HB 722. This funding was not included in the base budget for the division. The executive requests $1.6 million general fund for the biennium to pay bed utilization fees. Because the general fund receives 30 percent of the proceeds from the utilization fee the net general fund impact is zero. LC0287 proposes increasing the utilization fee from five to six percent.

Figure 42
2005 Biennium Compared to 2007 Biennium
Disability Services Division

Budget Item/Fund	2005 Biennium	2007 Biennium	Percent of Total	Change	Percent Incr/Decr
FTE	541.42	501.77		(39.65)	
Personal Services	$45,026,963	$41,531,238	16.2%	($3,495,725)	-7.8%
Operating	15,111,810	17,986,497	7.0%	2,874,687	19.0%
Equipment	87,988	156,266	0.1%	68,278	77.6%
Benefits&Claims	189,703,581	196,611,854	76.7%	6,908,273	3.6%
Debt Service	24,237	21,376	0.0%	(2,861)	-11.8%
Total Costs	$ 249,954,579	$ 256,307,231	100.0%	$6,352,652	80.7%
General Fund	$85,308,210	$89,714,762	35.0%	$4,406,552	5.2%
State Special	2,404,626	3,688,372	1.4%	1,283,746	53.4%
Federal Funds	162,241,743	162,904,097	63.6%	662,354	0.4%
Total Funds	$249,954,579	$256,307,231	100.0%	$6,352,652	2.5%

Biennial Budget Comparison

Figure 42 compares the budget request for the 2007 biennium to the 2005 biennium. General fund support for the division increases 5 percent due to increases in the state match required for Medicaid expenditures and requests for increased general fund to serve individuals on the waiting list for services. State special revenue support increases 53 percent because the executive requests continuation of the diversion of a portion of the tobacco settlement proceeds to support extended employment and independent living services for disabled individuals. These funds were provided via SB 485 of the 2003 session and were not included in the base budget for the 2007 biennium. The provisions of SB 485 terminate on June 30, 2005. Federal funds supporting the division increase less than one percent between the two biennia.

Personal services costs decrease almost 8 percent, primarily due to the movement of individuals from institutional to community services and the related reduction in staffing at the institution. Operating costs increase 19 percent primarily due to the bed tax implemented via HB 722 of the 2003 session. Benefit costs increases of about 4 percent are related to the movement of individuals from the institution and waiting list to community services.

Present Law Adjustments

The "Present Law Adjustments" table shows the primary changes to the adjusted base budget proposed by the executive. "Statewide Present Law" adjustments are standard categories of adjustments made to all agencies. Decisions on these items were applied globally to all agencies. The other numbered adjustments in the table correspond to the narrative descriptions.

Present Law Adjustments	Fiscal 2006					Fiscal 2007				
	FTE	General Fund	State Special	Federal Special	Total Funds	FTE	General Fund	State Special	Federal Special	Total Funds
Personal Services					(196,641)					(150,318)
Vacancy Savings					(902,404)					(904,247)
Inflation/Deflation					19,166					13,411
Fixed Costs					(55,298)					(32,985)
Total Statewide Present Law Adjustments					($1,135,177)					($1,074,139)
DP 25 - FMAP Enhancement Adjustment	0.00	1,726,793	0	(1,726,793)	0	0.00	1,726,793	0	(1,726,793)	0
DP 31 - FMAP Adjustment - Developmental Disabilities	0.00	1,140,119	0	(1,140,119)	0	0.00	1,561,844	0	(1,561,844)	0
DP 40 - Closure of Eastmont Human Services Center	0.00	(284,530)	0	0	(284,530)	0.00	(284,362)	0	0	(284,362)
DP 47 - Montana Developmental Center Base Adjustments	0.00	593,130	0	0	593,130	0.00	524,330	0	0	524,330
DP 52 - Rent Increases	0.00	13,420	0	31,580	45,000	0.00	17,488	0	41,524	59,012
DP 59 - Vocational Rehabilitation Tuition Increases	0.00	67,794	0	250,490	318,284	0.00	138,301	0	510,998	649,299
DP 64 - Montana Developmental Center Replacement Equipment	0.00	51,000	0	0	51,000	0.00	36,000	0	0	36,000
DP 92 - Montana Telecommunications Access Program Increase	0.00	0	244,448	0	244,448	0.00	0	353,470	0	353,470
DP 109 - Montana Telecommunications Access Program Decrease	0.00	0	(100,000)	0	(100,000)	0.00	0	(100,000)	0	(100,000)
DP 135 - Disability Determination Services Base Adjustment	0.00	0	0	102,816	102,816	0.00	0	0	153,569	153,569
DP 9999 - Statewide FTE Reduction	(4.95)	(120,677)	0	0	(120,677)	(4.65)	(115,076)	0	0	(115,076)
Total Other Present Law Adjustments	**(4.95)**	**$3,187,049**	**$144,448**	**($2,482,026)**	**$849,471**	**(4.65)**	**$3,605,318**	**$253,470**	**($2,582,546)**	**$1,276,242**
Grand Total All Present Law Adjustments					($285,706)					$202,103

<u>DP 25 - FMAP Enhancement Adjustment -</u> The executive requests an increase of approximately $3.5 million general fund and an offsetting decrease of federal funds for the biennium to reflect the discontinuation of an enhanced Federal Medical Assistance Percentage (FMAP) rate. The federal Jobs and Growth Tax Relief Reconciliation Act provided a short-term enhanced FMAP rate that resulted in an increase in federal funds and decrease in state funds of about three percent in the base year.

LFD COMMENT

Please refer to the agency narrative for a discussion of the federal Medicaid matching rates.

DP 31 - FMAP Adjustment - Developmental Disabilities - The executive requests an increase in general fund of about $2.7 million for the biennium with an offsetting decrease in federal funds due to projected decreases in the FMAP rates for FY 2006 and FY 2007.

LFD COMMENT Please refer to the agency narrative for a discussion of the federal Medicaid matching rates.

DP 40 - Closure of Eastmont Human Services Center - This decision package requests a general fund reduction of $568,892 for the biennium to reflect the closure of the Eastern Montana Human Services Center (Eastmont) in Glendive. HB 727 from the 2003 legislative session provided for the closure of Eastmont by December 31, 2003 and transfer of the facility to the Department of Corrections. Some employees of Eastmont transferred to the facility in Boulder and the remaining individuals' employment with the state was discontinued. Residents of the facility were moved to community group homes or to the Montana Developmental Center in Boulder. No FTE reductions are reflected in this decision package because at the time the personal services snapshot used to develop the 2007 biennium budget was completed, no FTE remained budgeted for Eastmont.

DP 47 - Montana Developmental Center Base Adjustments - The executive requests $1,117,460 general fund for the biennium for holidays worked, overtime and differential pay, and employer paid benefits, which are not included in the base budget.

LFD ISSUE Actual FY 2004 expenditures in these categories were $780,643 for overtime, $4,408 for differential pay, and $180,205 for holidays worked or a total of $965,256 without the costs of mandatory employee benefits such as social security and Medicare tax. The amount requested in this decision package for the biennium appears to be about the same amount that was expended in just one year, FY 2004.

Program staff indicated that efforts are underway to review the causes of overtime usage and determine how overtime costs might be avoided or minimized. However, program staff is not confident that overtime, differential pay, holidays worked, and related costs can be reduced to the level anticipated in the 2007 biennium budget, and is concerned that the budget request for these items was understated. The legislature may wish to have the program review its plans for decreasing overtime costs and funding overtime costs in excess of the budget request, if that should occur.

DP 52 - Rent Increases - The executive requests $30,908 of general fund and $104,012 federal funds for the biennium to support increases in rental costs at ten Developmental Disability and Vocational Rehabilitation field offices.

DP 59 - Vocational Rehabilitation Tuition Increases - The executive requests $206,095 general fund and $967,583 total funds for the biennium to support increased tuition costs. This is an increase of 8.2 percent between the FY 2004 base and FY 2006 and 16.7 percent between the FY 2004 base and FY 2007. The department estimates that tuition has and will increase about 4 percent per year. However, more than 4 percent per year is requested because no increase for tuition costs was included in the 2005 biennium budget.

LFD ISSUE

Figure 43 illustrates the average in-state resident tuition and percentage increase between FY 2000 and FY 2007 based upon actual and anticipated (four percent per year assumed in each year of the 2007 biennium) increases in tuition. As the figure illustrates, the compound rate of increase between FY 2004 and FY 2007 estimated tuition rates is 7.3 percent per year.

Figure 43
Montana University System

Year	Average Tuition	Percent Change	Compound Rate of Change
FY 2000	$2,124.93		
FY 2001	2,203	3.7%	
FY 2002	2,464	11.8%	
FY 2003	2,757	11.9%	
FY 2004	3,060	11.0%	11.0%
FY 2005 Projected	3,375	10.3%	10.6%
FY 2006 Estimated	3,510	4.0%	8.4%
FY 2007 Estimated	3,650	4.0%	7.3%

Figure 44 provides estimates of the costs of tuition increases for the program. A 4 percent compounded rate of increase from FY 2004 through 2007 equates to an increase of $801,404 total funds for the 2007 biennium. A 7.3 percent compounded rate of increase from FY 2004 through 2007 equates to an increase of $1,501,022 total funds for the 2007 biennium. The executive budget includes a request for $967,583 total funds for the 2007 biennium for tuition increases. The legislature may wish to adjust the funding in this decision package to reflect an increase of 4 percent compounded as described in the executive request or 7.3 percent compounded, which would allow the program to keep pace with actual and anticipated increases in tuition costs. Vocational Rehabilitation costs are funded on a ratio of 21 percent state funds, 79 percent federal funds.

Figure 44
Vocational Rehabilitation
Tuition Increase

Year	Tuition Dollars	4% per Yr. Incr.	Incr. Over FY 2004 Base	7.3% per Yr. Incr.	Incr. Over FY 2004 Base
FY 04 Base	$3,881,568				
FY 05		$4,036,831		$4,164,923	
FY06		4,198,304	$316,736	4,468,962	$587,394
FY07		4,366,236	484,668	4,795,196	913,628
Increase for 12007 Biennium			$801,404		$1,501,022

DP 64 - Montana Developmental Center Replacement Equipment - The executive requests $87,000 of general fund for the biennium to replace equipment used in providing services to individuals who reside at the Montana Developmental Center. MDC proposes replacing one service truck and two passenger vans. Two of the passenger vans (which are used only for on campus transportation) have more than 100,000 miles and the other two passenger vans (which are used to transport clients off campus) have in excess of 90,000 miles each.

DP 92 - Montana Telecommunications Access Program Increase - The executive requests an increase of about $600,000 for the biennium from the handicapped telecommunications state special revenue fund. The increase in funding would support a projected expansion in usage of the captioned telephone service by individuals with hearing and speech impairments. The projected usage of captioned telephone service is offset in part by an anticipated decrease in the usage of traditional relay services.

LFD ISSUE

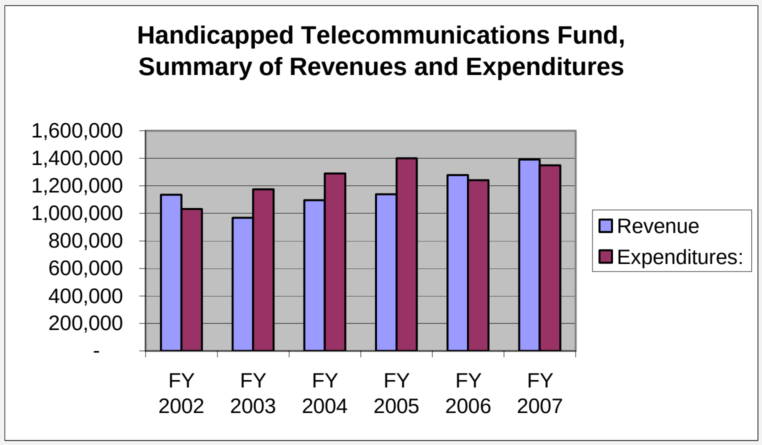
Montana Telecommunications Access Program

The Montana Telecommunications Access Program (MTAP) is administered as part of the Vocational Rehabilitation section of the division. MTAP is supported by revenue derived from the imposition of a fee of 10 cents per telephone line. MTAP provides, free of charge, equipment to individuals that are deaf and blind, deaf, hard-of-hearing, speech impaired or mobility impaired, and whose income is less than 250 percent of the federal poverty level. MTAP also pays a per minute charge on behalf of users of telecommunications relay services.

Figure 45 displays the historical revenue and expenditure levels for MTAP. Historically, revenues have not always kept pace with expenditures, and maintaining structural balance within the fund has been an issue of concern. The budget proposed by the executive utilizes decreases in advertising and traditional relay costs to offset anticipated increases in the number of users of captioned telephones and associated relay costs. The executive budget assumes that 11 new captioned telephones are distributed each month and that the costs of captioned relay costs decrease from $1.61 per minute to $1.40 per minute effective July 1, 2005. The budget request also assumes that the usage of traditional relay costs declines as more captioned telephones are placed in use. Depending upon whether or not and which of these assumptions proves to be an accurate estimation of future costs, the costs of the program could be either understated or overstated.

While federal regulation requires the provision of relay services, it does not require that equipment be provided. However, Montana has chosen to do so and in FY 2004 the program expended $132,654 for equipment. The legislature may wish to clarify statutory provisions governing this program related to the sustenance of the program within the revenues generated by the tax allocated to it. The legislature may wish to direct the department to reduce non-mandatory expenditures in the event revenues fall below anticipated levels or mandatory expenditures exceed anticipated level, so that the program remains structurally balanced and expenditures do not exceed revenues.

Figure 45



<u>DP 109 - Montana Telecommunications Access Program Decrease -</u> The executive proposes reducing operating expenses of the MTAP program by $200,000 state special revenue for the biennium. Operating costs reductions would be achieved by the cancellation of a contract for public relations and advertising. After this reduction, the program would have ongoing funding of $30,000 per year in its budget to provide public relations, advertising, and program outreach through efforts such as a web page, newsletter, trade publications, senior fairs and limited radio and television advertising.

LFD ISSUE

Please refer to the narrative under DP 92 for a discussion of MTAP.

<u>DP 135 - Disability Determination Services Base Adjustment -</u> The executive requests a $256,385 increase in federal funds for the biennium for Disability Determination Services workload increases. These increases include: overtime, medical consultant contracts, rent, and claimant travel.

LFD COMMENT The estimated overtime cost included in this decision package is $10,355 per year. Actual overtime costs in the base year were $2,761. Disability Determination Service anticipated that overtime costs will increase due to the change to a new paperless system. It is important that claims be processed in a timely manner so that applicants receive benefits promptly and because this is one of the measures the Social Security Administration uses to evaluate programs.

DP 9999 - Statewide FTE Reduction - This decision package implements an FTE reduction equivalent to the reductions taken in the 2003 legislative session. This 4.65 FTE and $236,000 general fund per biennium are removed from the budget permanently.

This decision package reduces funding for personal services by $235,753 general fund to reflect the across the board personal service reduction included in the 2005 biennium budget by the legislature.

LFD COMMENT Please refer to the Statewide Perspectives, Volume 1 for a discussion of this reduction.

New Proposals

New Proposals

Program	FTE (Fiscal 2006)	General Fund (Fiscal 2006)	State Special (Fiscal 2006)	Federal Special (Fiscal 2006)	Total Funds (Fiscal 2006)	FTE (Fiscal 2007)	General Fund (Fiscal 2007)	State Special (Fiscal 2007)	Federal Special (Fiscal 2007)	Total Funds (Fiscal 2007)
DP 3 - Continuation of PSA for Independent Living (Requires Legislation)										
10	0.00	0	228,766	0	228,766	0.00	0	228,766	0	228,766
DP 10 - Continuation of PSA for Extended Employment (Requires Legislation)										
10	0.00	0	270,639	0	270,639	0.00	0	270,639	0	270,639
DP 39 - Movement to Community Services										
10	(35.00)	(171,846)	0	1,604,871	1,433,025	(35.00)	(786,731)	0	1,508,243	721,512
DP 83 - Wait List Reduction										
10	0.00	326,138	0	798,863	1,125,001	0.00	335,700	0	789,300	1,125,000
DP 149 - Developmental Disabilities Program - Fed Authority										
10	0.00	0	0	1,000,000	1,000,000	0.00	0	0	1,000,000	1,000,000
DP 168 - Bed Tax Funding										
10	0.00	800,000	0	0	800,000	0.00	800,000	0	0	800,000
Total	(35.00)	$954,292	$499,405	$3,403,734	$4,857,431	(35.00)	$348,969	$499,405	$3,297,543	$4,145,917

DP 3 - Continuation of PSA for Independent Living (Requires Legislation) - The executive requests continuation of $457,532 state special revenue for the biennium to support independent living services for disabled individuals. The funding to support this request is from the prevention and stabilization fund created by the diversion of tobacco settlement proceeds as authorized by SB 485 of the 2003 legislative session. The provisions of SB 485 terminate on June 30, 2005.

LFD ISSUE Please refer to the agency narrative for a discussion of tobacco settlement proceeds and related issues

DP 10 - Continuation of PSA for Extended Employment (Requires Legislation) - The executive requests continuation of $541,278 state special revenue for the biennium to support extended employment services. The funding to support this request is from the prevention and stabilization fund created by the diversion of tobacco settlement proceeds as authorized by SB 485 of the 2003 legislative session. The provisions of SB 485 terminate on June 30, 2005.

LFD ISSUE Please refer to the agency narrative for a discussion of tobacco settlement proceeds and related issues.

DP 39 - Movement to Community Services - The executive requests a reduction of $939,379 general fund and an increase of $3,113,114 in federal funds for the biennium to serve 26 individuals from the Montana Developmental Center in community services. As a result of the Travis D. lawsuit, which was settled in February 2004, the department proposes moving individuals from the state institution to community placements. This requests includes $500,000 of general fund one-time-only funding in FY 2006 to fund start-up costs for construction of five group homes.

LFD ISSUE

Figure 46 summarizes the costs and funding requested by the executive in the decision package titled "Movement to Community Services". This decision package requests funding to move 52 individuals (during the biennium) from the institution to community services and to comply with requirements of the settlement agreement in the lawsuit commonly known as Travis D. As illustrated in the figure, this decision package includes funding for six items and an offsetting reduction in general fund support for the institution.

Figure 46
Summary of Costs Included in Movement to Community
Decision Package, 2007 Biennium Budget Request

Description	FY 06 Total Funds	FY 06 General Fund	FY 06 Federal Funds	FY 07 Total Funds	FY 07 General Fund	FY 07 Federal Funds	2007 Biennium General Fund	2007 Biennium Fed. Funds
Benefits & Claims	$ 1,950,000	$565,305	$1,384,695	$1,950,000	$581,880	$1,368,120	$1,147,185	$2,752,815
Crisis Fund	200,000	120,600	79,400	200,000	120,600	79,400	241,200	158,800
Case Managers*	96,000	40,579	55,421	96,000	41,232	54,768	81,811	110,189
Training Funds	200,000	120,600	79,400	0	0	0	120,600	79,400
Construction Start-up*	500,000	500,000	0	0	0	0	500,000	0
Consultants	15,000	9,045	5,955	15,000	9,045	5,955	18,090	11,910
Subtotal	2,961,000	1,356,129	1,604,871	2,261,000	752,757	1,508,243	2,108,886	3,113,114
Projected MDC Savings	(1,527,975)	(1,527,975)	-	(1,539,488)	(1,539,488)	-	(3,067,463)	-
Funding Requested	$1,433,025	($171,846)	$1,604,871	$721,512	($786,731)	$1,508,243	($958,577)	$3,113,114
General Fund Revenue*	915,182	915,182	0	940,099	940,099	0	1,855,281	0
Net General Fund Decrease		($743,336)			($153,368)		($896,704)	

*Notes
This request includes 2.0 FTE contracted case managers.
This request includes $500,000 general fund to be used as grants for start-up costs of new group homes.
DPHHS projected decrease in general fund revenue from reimbursement for institutional costs (primarily Medicaid reimbursement).

The legislature may wish to consider the following issues related to this decision package.

1) Rather than request additional FTE this decision package proposes hiring 2.0 FTE case managers under contract. Does the legislature wish to add case managers to the DD system?
2) This decision package includes a request for $200,000 per year ($400,000) for the biennium to fund a crisis fund as required under the Travis D. settlement agreement. Does the legislature wish to fund this item in addition the base level of funding for the service delivery system or should this funding be set aside from the funding already provided to the department?
3) The legislature may wish to establish restricted, one-time-only appropriations for items such as crisis funds, training funds, and construction start-up funds, so that these cannot be used for other purposes and do not become part of the base budget for the next biennium.
4) Given that the settlement agreement in the Travis D. case prohibits the department from funding congregate living settings for more than eight individuals, and the national trend toward smaller and more individualized service settings, the legislature may wish to consider whether development of additional group homes is desirable or if other types of living settings should be developed.

Individuals eligible for supplemental security income who reside in community residential settings are also eligible to receive a state supplement. The funding necessary to provide the state supplement for the 52 individuals that disability services plans to move from institutional to community settings is not included in the budget request of either the Senior and Long Term Care or Disability Services Divisions. The legislature may wish to:

- Specify that the Disability Services Division fund these costs within the funding allocated to that division
- Provide an appropriation for this purpose to the Senior and Long Term Care Division, which normally funds state supplemental payments

DP 83 - Wait List Reduction - This request is for approximately $660,000 of general fund and $1.6 million of federal funds for the biennium to move 15 individuals off the developmental disabilities waiting list.

LFD ISSUE Please refer to the program narrative for a discussion of the developmental disabilities service delivery system and related issues.

DP 149 - Developmental Disabilities Program - Fed Authority - The executive requests $2 million federal funds for the biennium to capture increases in federal grants and to maximize the federal funds obtained with the general fund supporting the home and community based waiver. This waiver is used to fund services to individuals with developmental disabilities. The federal funds would not require any future commitment of general fund dollars.

LFD ISSUE The legislature may wish to follow the practice established during the 2003 legislature and appropriate requested federal authority with unspecified usage to the director's office, policy and planning unit. This action would centralize the appropriation of such funds at the agency level, and provide the policy and planning unit, which also oversees refinancing efforts, with oversight.

DP 168 - Bed Tax Funding - This request is to provide $1.6 million in general fund over the biennium for the Montana Developmental Center to pay the bed tax enacted by HB 722 of the 2003 Session. This proposal is revenue neutral as a like amount will be deposited in the general fund.

LFD COMMENT Please refer to the funding section of the program narrative for a discussion on the bed utilization fee passed and approved by the 2003 Legislature.

Language

The Travis D. lawsuit was settled on February 5, 2004 through mediation. The terms of the settlement agreement between the executive branch and the plaintiffs require the department to move at least 45 individuals from the Montana Developmental Center (MDC) into community services by December 2007. The Disability Services Division FY 2006 budget includes $500,0000 of general fund one-time-only funding to construct five group homes. The $500,000 would allow for start-up costs for the group home construction to implement the movement in FY 2008 of the last 20 individuals who have intensive medical needs from MDC to community services. The department would provide one-time-only grants for providers to use in the construction of the new group homes for the care of these individuals.

LFD ISSUE Please refer to the narrative above for a discussion of start-up funds, development of additional groups homes, and issues related to the movement of individuals to community services.